

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

NOTICE OF HEARING

Proposed Amendments to Rules Governing Water Quality Variances, *Minnesota Rules*, Chapter 7050 Waters of the State (specifically, part 7050.0190), Chapter 7052 Lake Superior Basin Water Standards (specifically, part 7052.0280), and Chapter 7053 State Waters Discharge Restrictions (specifically, part 7053.0195), and Repeal of *Minnesota Rules*, parts 7050.0190, subpart 3; and 7053.0195, subpart 3. Revisor's ID Number RD4136

Introduction. On November 9, 2015, the Minnesota Pollution Control Agency (MPCA) published a Dual Notice of Intent to Adopt Rules related to water quality variances. The notice stated that the MPCA would hold a hearing on the rules if 25 requests were received. In the absence of 25 requests, Minnesota law allows adoption of a rule without a hearing. However, although the rule is procedural in nature, there is a possibility that U.S. Environmental Protection Agency (USEPA) would view the rule as "a water quality standard" under the Clean Water Act and that adopting the rule without a hearing could lead to USEPA comments indicating that the proposed rules will not be approvable. In order to avoid unnecessary procedural delay, the MPCA gives notice that we intend to proceed with a hearing, to take place on February 4, 2016, as described in the November 9, 2015, notice.

Public Hearing. The MPCA intends to adopt rules after a hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, Minnesota Statutes, sections 14.131 to 14.20. As identified in the original notice for the proposed rules, the MPCA will hold a hearing on the above-named rules starting at 3:30 p.m. on Thursday, February 4, 2016, at the MPCA offices listed below. The hearing continues until all parties are heard or until the Administrative Law Judge (ALJ) adjourns the hearing. The hearing will be held at the MPCA offices at the following locations:

MPCA St. Paul, Room 100 and Video Conference Room 4-1, 520 Lafayette Road North,
St. Paul, Minnesota 55155

MPCA Duluth, Video Conference Room, 525 Lake Avenue South, Suite 400, Duluth, Minnesota
55802

The MPCA will hold the hearing simultaneously in the two locations listed above. The Administrative Law Judge will conduct the hearing from the St. Paul location. MPCA staff will be present at the two locations to facilitate the process. Attendees will be invited to participate in the hearing in-person and by video conference in St. Paul and by video conference at the Duluth hearing location.

Directions to the hearing locations may be found on the MPCA webpage at <http://www.pca.state.mn.us/iryp3e4> or by contacting the MPCA contact person listed in this notice. Please note access to the MPCA offices is controlled. To attend a hearing you will be asked to sign in at the security desk and provide photo identification, such as a driver's license.

Administrative Law Judge. ALJ, the Honorable Judge Barbara J. Case is assigned to conduct the hearing. Judge Case's Legal Assistant Denise Collins can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7900, and FAX 651-539-0310 or denise.collins@state.mn.us. The rule hearing procedure is governed by Minnesota Statutes, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240.

Subject of Rules. The MPCA proposes to amend three water rule chapters to address differences in the variance rules and to provide procedural consistency in application of the state's variance rules and with applicable federal requirements. The proposed rules are only concerned with the procedural requirements for obtaining a variance and will not result in more or less restrictive water quality standards or change to a water quality standard of any kind. For more information about the proposed amendments, please refer to the November 9, 2015, notice and the statement of need and reasonableness (SONAR) which is available as stated below.

Statutory Authority. The statutory authority to adopt these proposed rule amendments is in *Minnesota Statutes*, section 116.07, subdivision 5, and *Minnesota Statutes*, section 115.03, subdivision 5. The MPCA is also directed to address negative impacts on air and water quality, as described in *Minnesota Statutes*, sections 116D.01 and 116D.02.

MPCA Contact Person. The MPCA contact person is: Mary H. Lynn at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155, telephone 651-757-2439, and mary.lynn@state.mn.us. You may also call the MPCA at 651-296-6300 or 800-657-3864 or use your preferred relay service info.pca@state.mn.us.

Availability of Rules and Statement of Need and Reasonableness. A copy of the rules were published with the original notice for the proposed rules and are available on the MPCA's webpage at <http://www.pca.state.mn.us/zihy1479>. A free copy of the rules is available upon request from the MPCA contact person identified above. The SONAR which summarizes the justification for the proposed rules is also available at that webpage.

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. The ALJ will accept your views either orally at the hearing or in writing at any time before the close of the hearing record. Submit written comments to the ALJ at the address above or to <https://minnesotaoah.granicusideas.com>. All evidence that you present should relate to the proposed rules. You may also submit written material to the ALJ to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the ALJ may order this five-day comment period extended for a longer period but for no more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period during which the MPCA and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the ALJ no later than 4:30 p.m. on the due date. All comments or responses received are public and will be available for review at the Office of Administrative Hearings.

The MPCA requests that any person submitting written views or data to the ALJ before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the MPCA contact person at the address stated above.

Alternative Format/Accommodation. Upon request, the information in this notice can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the MPCA contact person at the address or telephone number listed above.

Modifications. The MPCA may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. The adopted rules may not be substantially different than these proposed rules, unless the MPCA follows the procedure under *Minnesota Rules*, part 1400.2110.

Adoption Procedure after the Hearing. After the close of the hearing record, the ALJ will issue a report on the proposed rules. You may ask to be notified of the date when the ALJ's report will become available, and can make this request at the hearing or in writing to the ALJ. You may also ask to be notified of the date that the MPCA adopts the rules and files them with the Secretary of State, or ask to register with the MPCA to receive notice of future rule proceedings. You may make these requests at the hearing or in writing to the MPCA contact person listed above.

Lobbyist Registration. *Minnesota Statute*, chapter 10A, requires each lobbyist to register with the Minnesota Campaign Finance and Public Disclosure Board. You should direct questions about this requirement of the Campaign Finance and Public Disclosure Board located at 190 Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 800-657-3889.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

December 18, 2015

Date

Rebecca J. Flouf
for John Linc Stine, Commissioner
Minnesota Pollution Control Agency